



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MAR - 6 2014**

Jan Witold Baran  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 6604  
CBS Radio Stations, Inc. (WTIC)

Dear Mr. Baran:

On July 10, 2012, the Federal Election Commission notified your client, CBS Radio Stations, Inc. (WTIC), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Among the alleged violations were allegations that CBS Radio Stations, Inc. (WTIC) made a contribution to Lisa Wilson-Foley for Congress in the form of John Rowland's radio show. On February 25, 2014, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe CBS Radio Stations, Inc. (WTIC) violated 2 U.S.C. § 441b(a). Also on that date, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**BEFORE THE FEDERAL ELECTION COMMISSION**

**RESPONDENT: CBS Radio Stations Inc. (WTIC)**

**MUR 6604**

**FACTUAL AND LEGAL ANALYSIS**

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission by Kenneth James Krayeske, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondent.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

The Complaint alleges that CBS Radio Stations Inc. (WTIC) ("CBS Radio") and John Rowland as its agent made an in-kind corporate contribution to Lisa Wilson-Foley for Congress (the "Committee") when Rowland used time during a politically-themed radio talk show he hosted to attack one of Wilson-Foley's opponents in the 2012 convention and primary elections.<sup>1</sup> Respondent CBS Radio argues that the allegations concerning that contribution should be rejected under the statutory exemption for press entities to the prohibition against corporate contributions.<sup>2</sup>

Based on the record presently before the Commission, the Commission finds no reason to believe that CBS Radio made an in-kind corporate contribution through the radio talk show program.

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<sup>1</sup> Compl. at 2-3 (July 2, 2012). Lisa Wilson-Foley was a candidate for the U.S. House of Representatives in the Fifth Congressional District of Connecticut in 2012. Each congressional district in Connecticut holds a party nominating convention that the Commission has recognized as an election separate from the primary and general elections. See Advisory Op. 1976-58 (Peterson); Advisory Op. 2004-20 (Farrell). The convention and primary elections at issue here occurred on May 14, 2012, and August 14, 2012, respectively.

<sup>2</sup> CBS Radio Resp. at 5-6 (Aug. 20, 2012).

**B. Alleged Corporate Contribution from CBS Radio**

**1. Factual Background**

The Complaint alleges that CBS Radio made an impermissible in-kind corporate contribution to the Committee when Rowland used his radio talk show to attack one of Wilson-Foley's opponents, Andrew Roraback, that the Committee accepted an impermissible corporate contribution, and that the Committee failed to disclose that contribution.<sup>3</sup> The Complaint alleges that radio air time is a commodity, and because Rowland used his show to benefit the Committee, the Committee should have reported the air time as a contribution.<sup>4</sup> The Complaint also alleges that the Committee and CBS Radio coordinated the attack, with Rowland acting on behalf of CBS Radio as its agent.<sup>5</sup>

Respondent CBS Radio asserts that the Act's press exemption covers Rowland's radio show and therefore it did not constitute a contribution.<sup>6</sup> CBS Radio states that it owns and operates WTIC, a news/talk AM radio station serving the greater Hartford, Connecticut area.<sup>7</sup> WTIC broadcasts nationally syndicated programming as well as local programming, including a program hosted by Rowland that has been aired since September 2010.<sup>8</sup> The show is broadcast weekdays from 3 p.m. to 6 p.m. and "focuses

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<sup>3</sup> Wilson-Foley faced Roraback in the May 14, 2012, convention election and the August 14, 2012, primary election.

<sup>4</sup> Compl. at 2-3.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> CBS Radio Resp. at 3-6.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 1-2.

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1 on local issues that affect our towns and state . . . .”<sup>9</sup> According to CBS Radio, the  
2 show’s topics cover a range of subjects, from discussions of recent legislative activity to  
3 healthcare, state spending, and taxes.<sup>10</sup> CBS Radio also states that it is a wholly-owned  
4 subsidiary of CBS Radio Inc., a media and entertainment corporation specializing in  
5 radio programming.<sup>11</sup> CBS Radio Inc. is an indirect subsidiary of CBS Corporation, a  
6 publicly traded mass media corporation that is neither owned nor controlled by a  
7 candidate or political party.<sup>12</sup> Finally, CBS Radio asserts that it was acting as a press  
8 entity at all times when it produced and broadcast Rowland’s show on radio station  
9 WTIC.<sup>13</sup>

10 2. Legal Analysis

11 Under the Act, the term “expenditure” does not include any news story,  
12 commentary, or editorial distributed through the facilities of any broadcasting station,  
13 unless such facilities are owned or controlled by any political party, political committee,  
14 or candidate.<sup>14</sup> Commission regulations further provide that neither a “contribution” nor  
15 an “expenditure” results from “any cost incurred in covering or carrying a news story,  
16 commentary, or editorial by any broadcasting station . . . unless the facility is owned or

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<sup>9</sup> *Id.* at 2 (citing CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtics-state-and-church/> (last visited Nov. 26, 2013)).

<sup>10</sup> CBS Radio Resp. at 2.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> 2 U.S.C. § 431(9)(B)(i).

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1 controlled by any political party, political committee, or candidate[.]”<sup>15</sup> These exclusions  
2 are known as the “press exemption.” Costs covered by the press exemption are not  
3 contributions or expenditures and are not subject to the reporting requirements of the Act  
4 and Commission regulations.

5 The Commission conducts a two-step analysis to determine whether the press  
6 exemption applies. First, the entity engaging in the activity must be a press or media  
7 entity, in that its focus is the production, on a regular basis, of a program that  
8 disseminates news stories, commentary, or editorials.<sup>16</sup> Second, the Commission  
9 considers (i) whether the press entity is owned or controlled by a political party, political  
10 committee, or candidate, and, if not, (ii) whether the press entity is acting as a press entity  
11 in conducting the activity at issue (*i.e.*, whether it is acting in its “legitimate press  
12 function”).<sup>17</sup>

13 Here, both steps of the press exemption analysis are met. First, CBS Radio is in  
14 the business of producing and broadcasting national and local radio programs, including  
15 Rowland’s radio show that airs weekdays and covers a variety of news stories,  
16 commentary and editorial content.<sup>18</sup> CBS Radio, therefore, is a press entity. Second,

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<sup>15</sup> 11 C.F.R. §§ 100.73, 100.132.

<sup>16</sup> See, e.g., Advisory Op. 2007-20 (XM Radio) (“AO 2007-20”); Advisory Op. 2005-19 (Inside Track) (“AO 2005-19”); Advisory Op. 2005-16 (Fired Up!) (“AO 2005-16”).

<sup>17</sup> *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). In determining whether a press entity is acting in its legitimate function, the Commission considers (1) whether the press entity’s materials are available to the general public, and (2) whether the materials are comparable in form to those ordinarily issued by the press entity. AO 2005-16 (citing *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 251 (1986)).

<sup>18</sup> CBS Radio Resp. at 1-2 (citing CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtic-state-and-church/> (last visited Nov. 26, 2013)).

1 CBS Radio is not owned or controlled by a political party, political committee, or  
2 candidate. It also was acting within its legitimate press function: Rowland's weekday  
3 radio show was broadcast to the general public throughout southern New England, not  
4 just within the relevant district,<sup>19</sup> and the format of the show appears to be comparable in  
5 form to those ordinarily broadcast by CBS Radio.<sup>20</sup> Further, as the Commission has  
6 repeatedly stated, lack of objectivity in the show's news stories, commentaries, or  
7 editorials is irrelevant.<sup>21</sup> Thus, Rowland's radio show is covered by the press exemption  
8 and any costs associated with the production and distribution of the show are not treated  
9 as contributions or expenditures under the Act and Commission regulations. Given this  
10 conclusion, the Commission need not consider whether the alleged contribution was  
11 coordinated.<sup>22</sup> The Commission therefore finds no reason to believe that CBS Radio  
12 Stations Inc. (WTIC) violated 2 U.S.C. § 441b(a) by making a contribution in connection  
13 with Rowland's radio show.

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<sup>19</sup> CBS Radio Resp. at 5.

<sup>20</sup> *Id.* at 1-2.

<sup>21</sup> See AO 2007-20; AO 2005-19; AO 2005-16; Statement of Reasons, Comm'rs. Mason, McDonald, Sandstrom, Thomas, and Wold at 3, MURs 4929, 5006, 5090, 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times, and Washington Post) ("Unbalanced news reporting and commentary are included in the activities protected by the media exemption").

<sup>22</sup> See 11 C.F.R. § 109.21(b)(1) (excludes payments for exempted activities from in-kind contributions); MUR 6242 (J.D. Hayworth 2010) (because the press exemption applies to the alleged contributions, it is unnecessary to consider whether some of the activities might constitute coordinated communications).

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